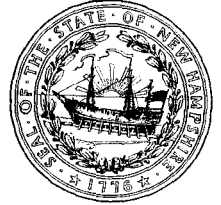




The State of New Hampshire  
**Department of Environmental Services**



**Michael P. Nolin**  
Commissioner

Christopher J. Clarke  
P.O. Box 588  
Plymouth, NH 03264

**ADMINISTRATIVE ORDER  
BY CONSENT  
No. WMD 05-001**

K.C. Tire Recycling, L.L.C.  
Attn: Christopher J. Clarke  
P.O. Box 588  
Plymouth, NH 03264

Re: 37 Front Street, Campton, NH  
Solid Waste Permit # DES-SW-SP-03-004

**A. INTRODUCTION**

This Administrative Order by Consent is issued by the Department of Environmental Services, Waste Management Division to, and with the consent of, K.C. Tire Recycling, L.L.C. and Christopher J. Clarke, pursuant to RSA 149-M:15:I. This Administrative Order by Consent is effective upon signature by both parties.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.
2. K.C. Tire Recycling, L.L.C ("KC Tire") is a New Hampshire limited liability company having a mailing address of P.O. Box 588, Plymouth, NH 03264.
3. Christopher J. Clarke is an individual with a mailing address of P.O. Box 588, Plymouth, NH 03264.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Administrative Rules Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
2. KC Tire is not currently in good standing with the New Hampshire Secretary of State's Office. In filings with the New Hampshire Secretary of State's Office, Christopher J. Clarke is identified as KC Tire's Sole Member.

3. KC Tire conducts a tire recycling business operation at property located at 37 Front Street, Campton, NH, more particularly described in a deed recorded in the Grafton County Registry of Deeds at Book 2653, Page 258 and Book 2236, Page 651, and further identified by the Campton Assessor's Office as Map 9-15-31 and 9-15-31-2 (the "Site"). According to the Town of Campton's tax records, the Site is currently owned by Beebe River Development, LLC, a third party that, on information and belief, is not related to KC Tire or Mr. Clarke.
4. The Site is the subject of solid waste permit number DES-SW-SP-03-004 ("the Permit") issued by DES to KC Tire. The application submitted by KC Tire and on which the permit was issued bears the signature of Christopher J. Clarke.
5. Issuance of the Permit was based upon information provided by Mr. Clarke in the application for the Permit, which included the approved operating plan of record ("the Operating Plan"), dated and received by DES on March 28, 2003, and the approved facility design plan ("the Design Plan") received by DES on March 19, 2003, with a most recent revision date of January 7, 2003.
6. RSA 149-M:4, IX defines a "solid waste facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."
7. The Site constitutes a solid waste facility as defined by RSA 149-M:4, IX.
8. RSA 149-M:9, XI provides that, "All permits shall be continuous in duration, but may be suspended or revoked for cause as provided in this chapter."
9. RSA 149-M:9, X provides in part, "The department shall not issue a permit for a solid waste facility unless the facility meets the terms and conditions required by rules adopted by the commissioner."
10. Pursuant to Env-Wm 2805.04(a), a facility shall operate in compliance with RSA 149-M, all requirements in the solid waste rules, including those cited in Env-Wm 2801.02(c) as applicable and this part, and the terms and conditions of the permit.
11. Pursuant to Env-Wm 2805.04(b), as a condition of the permit, the facility shall operate in accordance with the last approved operating plan of record.
12. Pursuant to the Permit, the maximum quantity of tires stored at the Site shall not exceed 60 tons, which is approximately 300 cubic yards or 6,000 tires.
13. On February 24, 2005, DES issued a Letter of Deficiency (LOD) to KC Tire noting violations of the Solid Waste Rules observed during previous Site visits.
14. The LOD indicated that approximately 23,000 tires were estimated to be stored at the Site during a January 27, 2005, DES site visit.

15. Based on observations made during a follow-up site visit on March 3, 2005, DES personnel estimated at least 71,438 tires were stored in buildings, in outside stockpiles and in trailers under the control of KC Tire. This estimate was based on all tires being the size of passenger car tires with the understanding that agricultural and truck tires may be fewer in number but weigh more than passenger tires. Of this estimate, approximately 47,480 tires were stored within the permitted limits of the site.
16. During the March 3, 2005, site visit, DES personnel observed approximately 23,958 tires under the control of KC Tire stored outside of the permitted Site limits.
17. Pursuant to the Permit, the approved operating hours for the KC Tire facility are 6:00 a.m. to 6:00 p.m. The Operating Plan allows for "occasional" departures from the site earlier than 6:00 a.m. or arrival and parking at the site after 6:00 p.m.
18. Based on a January 13, 2005, letter to DES from the KC Tire facility operator and representative, Kenneth P. Anderson, the facility is *routinely* operating outside of the hours of 6:00 a.m. to 6:00 p.m. as described in the Operating Plan.
19. RSA 149-M:9, VI prohibits any person from operating a solid waste facility unless the person is certified by DES.
20. During the March 3, 2005, site visit, DES personnel observed three uncertified facility operators handling waste at the Site.
21. The Site contains an asbestos site, which is required by the Permit to be cordoned off.
22. During the March 3, 2005, site visit, DES personnel observed that the asbestos site was not cordoned off as required and showed evidence of foot traffic through it.
23. During the March 3, 2005, site visit, DES personnel observed the management of tire rims at the Site. The management of tire rims is not described in the Operating Plan, and was not identified as a part of operations in the Permit application.
24. During the March 3, 2005, site visit, DES personnel observed the storage of tires on the ground surface in an open area, which is not allowed by the Permit, and is not described in the Operating Plan.
25. During the March 3, 2005, site visit, DES personnel observed an open floor drain in use in the "Maintenance Building" as identified on the Design Plan. The use of an open floor drain in an area used for vehicle repair and/or maintenance is not allowed pursuant to Env-Ws 1503.04(c).
26. The Design Plan includes a diagram for traffic flow. During the March 3, 2005, site visit, DES personnel observed that traffic flow was not occurring in accordance with the Design Plan.

27. The Design Plan shows access control using a chain link fence and locked gates. During the March 3, 2005, site visit, DES personnel observed that access to the Site was not restricted in accordance with the Design Plan. There were no locked gates, and no chain link fence was erected.

28. During the March 3, 2005, site visit, DES personnel observed drums in the Maintenance Building that were full and not properly labeled pursuant to Env-Wm 500 and Env-Wm 807. DES believes these drums contain used oil. DES observed what it believes to be used oil staining on the floor around the drums.

29. During visits to the Site on January 27, 2005, and March 3, 2005, DES observed outdoor tire stockpiles that did not have a minimum 25 foot fire lane around each pile and did not have a berm with a minimum height of 12 inches constructed around the stockpile perimeter, as is required pursuant to Env-Wm 2605.02(b)(3).

30. As a result of a January 11, 2005, letter from Campton Fire Chief Tobine to DES and a meeting between DES and Fire Chief Tobine held on March 16, 2005, DES understands that the facility has not been operated in a manner that minimizes the risk of fires and provides the ability to deal with a potential fire, as is required pursuant to Env-Wm 2702.04(b).

#### **D. DETERMINATION OF VIOLATIONS**

1. KC Tire has violated Env-Wm 2805.04(a) and the Permit by:
  - a. Exceeding the storage capacity specified in Condition # 8 of the Permit; and
  - b. Not cordoning off the on-Site asbestos area as specified in Condition # 13 of the Permit.
2. KC Tire has violated Env-Wm 2805.04(b) by not operating in accordance with the Operating Plan with respect to the following:
  - a. The collection, storage and management of tire rims;
  - b. The storage of tires on the ground surface in an open area;
  - c. Operating on a regular basis outside of the permitted hours of 6 a.m. to 6.p.m. as presented in the Operating Plan and as required by Env-Wm 2805.08(b);
  - d. Not implementing traffic flow at the Site as specified in the Design Plan; and
  - e. Not controlling access to the Site as described in the Design Plan.
3. KC Tire has violated Env-Wm 2605.02 and Env-Wm 2104.05(d)(1) through inappropriate management of tire stockpiles on the ground surface.
4. KC Tire has violated Env-Wm 2105.02(a) and (b) by accepting waste for which it has no provisions for storage and arrangements for removal to an authorized facility.
5. KC Tire has violated Env-Wm 2705.07(b)(1) by not certifying all facility operators by either issued or interim certification.

6. KC Tire has violated Env-Ws 1503.04(c) with respect to floor drains.
7. KC Tire has violated Env-Wm 500 and Env-Wm 807 by the improper management of used oil.
8. KC Tire has violated Env-Wm 2605.02(b)3 by the improper management of outdoor tire stockpiles.
9. KC Tire has violated Env-Wm 2702.04(b) by not operating in a manner that minimizes the risk of fires and provides the ability to deal with a potential fire.

**E. ORDER**

Based on the above findings, DES hereby orders KC Tire and Christopher J. Clarke, and ~~KC Tire and Christopher J. Clarke each agree~~ to undertake and complete the following actions in accordance with the time schedules specified: *CFW CAC*

1. Immediately stop operation outside of the hours of 6 a.m. to 6 p.m., and refrain from operating outside of those hours until such time as the Permit is clarified.
2. By April 4, 2005, cordon off the asbestos area in accordance with the Permit.
3. By April 4, 2005, provide copies of all receipts, invoices, and all other documentation necessary to show that all tires received by the facility between December 14, 2004 and March 29, 2005, have since been transferred to an authorized facility, pursuant to Env-Wm 2105.03(b), Env-Wm 2605.04(a), and Env-Wm 2805.06.
4. By April 1, 2005, perform an inventory, in the presence of DES personnel, of all tires stored both on and off the Site as a result of the KC Tire facility operations. The inventory, as approved by DES, will include both "inspectable" and "non-inspectable" tires, and will be used to determine compliance with the remaining actions of this Order.
5. By April 15, 2005, delineate all storage areas by the use of signage or other means approved by the DES. Erect signage so that a third party can determine the contents or lack thereof of all storage areas, site buildings, trailers and stockpiles from an outside vantage point. Ensure that trailer placards properly identify the trailer contents at all times.
6. By April 15, 2005, certify all facility operators through either issued or interim certification.
7. By April 8, 2005, remove all tire stockpiles located on the ground surface into enclosed structures, covered trailers, or transfer containers.
8. By April 15, 2005, cordon off the limits of the Site with snow fencing until such time as temporary chain link fencing and gates are installed.

9. By May 20, 2005 install temporary chain link fencing and gates around the Site as represented in the Design Plan. The temporary fencing must remain as installed until permanent fencing or some other permanent access control method approved in writing by DES is installed.
10. No later than April 15, 2005, provide DES with documentation, for DES approval, to show that the facility is designed, constructed, and operated in a manner that minimizes the risk of fires and provides the ability to deal with them effectively if they occur.
11. By April 15, 2005, provide financial assurance for the total facility inventory of non-inspectable tires determined in Item #4 of this section.
12. Beginning April 1, 2005, and through April 8, 2005, provide DES with daily reports prepared at the end of each business day and which include the following:
  - a) The inventory of tires at the start of the business day;
  - b) The number of tires that were unloaded and sorted that business day;
  - c) The number of tires received by the facility that were not unloaded and sorted at the facility and that are to be stored into the next business day or longer;
  - d) The number of tires exported by the facility that day to an authorized facility;
  - e) The number of trailers at the beginning and end of each workday;
  - f) The inventory of tires at the end of the business day; and,
  - g) Copies of all receipts, invoices, and other supporting documentation necessary to show the quantity, type, source and destination of all waste received by or generated by the facility on that workday pursuant to Env-Wm 2105.03(b), Env-Wm 2605.04(a), and Env-Wm 2805.
13. Beginning April 15, 2005, and thereafter, file the reports described in Item #12 of this Order on a weekly basis. The inventory reported at the end of the week shall be used to establish a reduction in the amount of financial assurance that is required in Item #11 of this order.
14. Maintain at the facility, in a readily-reviewable format, all invoices, receipts, or other documentation necessary for DES to verify the reports described in Item #12 and #13 of this Order. This information is to be provided to the DES upon request.
15. By April 15, 2005, submit to DES for approval a detailed schedule to achieve compliance with regulations associated with the floor drain and used oil management. Include in the schedule measurable steps towards achieving compliance. DES approval of the schedule shall be obtained no later than April 22, 2005.

16. By April 22, 2005, submit to DES a revised Design Plan and Operating Plan which reflect actual current site conditions and site activities.

17. By May 6, 2005, reduce the total facility inventory of non-inspectable tires established in Item #4 of this Order to less than 6,000 tires.

18. Until such time as the permitted capacity has been reached, the amount of tires received by the facility on any given day shall not exceed the amount of tires exported by the facility on that given day.

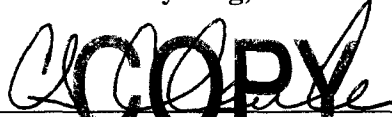
19. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent to DES as follows:

Catherine Wright, Waste Management Specialist  
Solid Waste Management Bureau  
DES Waste Management Division  
P.O. Box 95  
Concord, NH 03302-0095  
Fax No.: (603) 271-2456  
e-mail: [cawright@des.state.nh.us](mailto:cawright@des.state.nh.us)

**G. CONSENT AND WAIVER OF APPEAL**

1. By execution of this Administrative Order by Consent, KC Tire <sup>OC</sup> and <sup>CFW</sup> ~~Christopher J. Clarke~~ <sup>CFW</sup> ~~each~~ agree that this Order shall apply to and be binding upon KC Tire, and its members, officers, directors, successors and assigns, ~~and Christopher J. Clarke and his heirs, successors, and assigns,~~ and agree that this Order may be entered and enforced by a court of competent jurisdiction.
2. By execution of this Administrative Order by Consent, KC Tire <sup>OC</sup> and <sup>CFW</sup> ~~Christopher J. Clarke~~ <sup>CFW</sup> ~~each~~ waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Waste Management Council, and waives any right to object to the entry and enforcement of this order by a court of competent jurisdiction.

KC Tire Recycling, L.L.C.

  
**COPY**

KC Tire Recycling, L.L.C.

By: Christopher J. Clarke

Duly Authorized Member

4-1-05

Date

~~Christopher J. Clarke~~  
~~Individual~~

Date

NH Department of Environmental Services

  
**COPY**

Anthony G. Genta, D.G., Director  
Waste Management Division

4/7/05

Date



  
Michael P. Nolin, Commissioner

04 13 05  
Date

cc: Gretchen R. Hamel, Legal Unit Administrator  
Anthony Blenkinsop, Attorney, NHAGO (without attachments)  
Public Information Officer, DES PIP Office  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Board of Selectmen, Town of Campton  
David E. Tobine, Fire Chief, Campton, NH  
Albert Nault, Beebe River Development, L.L.C., PO Box 1403, Campton, NH 03223